

1 CHAIRPERSON JAMES: Mr. Di Gregory.

2 MR. Di GREGORY: That's very kind of you. Thank you.

3 CHAIRPERSON JAMES: Thank you.

4 MR. Di GREGORY: Good morning, members of the
5 Commission.

6 CHAIRPERSON JAMES: Good morning.

7 MR. Di GREGORY: My name is Kevin Di Gregory and a
8 I'm Deputy Assistant Attorney General in the Criminal Division of
9 the United States Department of Justice. Thanks for inviting me
10 to present the views of the Department of Justice on Indian
11 gaming and the Indian Gaming Regulatory Act. Let me begin by
12 providing you with some background on the government to
13 government relations between the United States and Indian tribes.
14 In the recent Executive Order on consultation and coordination
15 with Indian tribal governments, President Clinton explained some
16 of the fundamental principles of federal/tribal relations when he
17 said, "Since the formation of the union, the United States has
18 recognized Indian tribes as domestic dependent nations.

19 Indian tribes exercise inherent sovereign powers over
20 their members and territories. The United States continues to
21 work with Indian tribes on a government to government basis to
22 address issues concerning Indian tribal self-government trust
23 resources and Indian tribal treaty and other rights". That's
24 from Executive Order Number 13084. For our part, the Department
25 of Justice policy on Indian sovereignty and government to
26 government relations with tribes sets forth our recognition of
27 tribal self-government and our commitment to assist Indian tribes

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON D.C. 20005-3701

www.nealrgross.com

1 in strengthening their institutions of law enforcement, tribal
2 courts and traditional justice systems.

3 The Indian Gaming Regulatory Act was enacted in 1988
4 pursuant to the longstanding federal Indian self-determination
5 policy to promote tribal economic development, self-sufficiency
6 and strong tribal governments and to protect Indian tribes and
7 the general public from corrupt influences. IGRA has
8 successfully promoted tribal economic development. Today there
9 are more than 140 Class III compacts in 26 states generating
10 government revenue for essential tribal services including law
11 enforcement, roads, water and sewer systems, hospitals, schools,
12 youth centers and alcohol and substance abuse treatment centers.

13 And the economic benefits of Indian gaming do not
14 stop at the boundaries of Indian country. Indian gaming
15 generates jobs and economic activity in neighboring state and
16 local communities but an effective regulatory system is essential
17 to protect Indian gaming and the benefits that accrue from it.
18 What is the role and what are the interests of the Department of
19 Justice?

20 The Department of Justice has significant
21 responsibilities in Indian country in terms of law enforcement
22 and in our governmental relations with the tribes. Although the
23 Department does not participate directly in gaming regulation,
24 the Department is keenly interested in seeing the Indian Gaming
25 Regulatory Act's regulatory system work and work well. The
26 Department has testified to Congress that in the absence of
27 adequate regulatory oversight, large scale gaming which generates
28 huge cash flows may be targeted by organized crime or criminal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON D.C. 20005-3701

www.nealrgross.com

1 entrepreneurs, may have its proceeds skimmed by corrupt managers
2 and may be victimized by dishonest employees or outside cheats.

3 Minimum federal standards for Indian gaming should be
4 established to improve the safeguards for Indian gaming against
5 corruption. Although to date there have been few attempts by
6 organized crime associates to infiltrate Indian gaming, when
7 attempts to obtain an interest in Indian casinos has been made,
8 the FBI, usually with the cooperation of tribal leaders, has
9 reacted swiftly. A recent example is the coordinated prosecution
10 of Pittsburgh organized crime figures and their associates by the
11 United States Attorneys in Pittsburgh and San Diego for the
12 attempts of those organized crime figures to take over the gaming
13 operations of the Rincon Band.

14 Seventeen defendants were indicted for various
15 offenses including obstruction of justice and conspiracy to
16 interfere with the functioning of the National Indian Gaming
17 Commission by making fraudulent representations to that
18 Commission. All have pleaded guilty and have been sentenced.
19 The Constitution of the United States establishes Indian affairs
20 as a unique area of federal concern. In the absence of a
21 delegation of congressional authority to the states, federal law
22 governs relations with Indian nations and in 1987 the Supreme
23 Court held that gaming permitted under state law and policy was
24 not subject to state regulation under Public Law 280. That was
25 the case of California v. Cabazon Mission Indians.

26 Public Law 280 does give some states the authority to
27 enact certain laws and have law enforcement jurisdiction over
28 Indian lands. At that time, Congress sought to provide clear

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON, D.C. 20005-3701

www.nealrgross.com

1 standards or regulations for the conduct of gaming on Indian
2 lands and Congress enacted the Indian Gaming Regulatory Act.
3 Recognizing that state interests as well as tribal interests are
4 implicated by high stakes Indian gaming because many patrons are
5 state citizens drawn from off reservation, Congress established a
6 tribal/state compact process to create regulatory systems which
7 reflect the interests of states, Indian tribes and the Federal
8 Government in Class III or casino style gaming.

9 The Supreme Court explained in providing states the
10 opportunity to participate in the regulation of Indian gaming
11 Congress extended to the states power which would otherwise be
12 withheld from them by the Constitution. They explained that in
13 the case of Seminole Tribe v. Florida, which I know you all are
14 aware of and I know you all have discussed both today and perhaps
15 yesterday as well.

16 Under the tribal/state compact process states and
17 tribes currently perform primary on-site regulation of Class III
18 gaming. An Indian tribe that desires to engage in Class III
19 gaming starts the process by requesting that the state negotiate
20 with the tribe to conclude a compact which may set forth a
21 particular regulatory framework for the gaming. IGRA
22 contemplates that a compact will be concluded within 180 days
23 from the time of such a request.

24 Congress understood, however, that the voluntary
25 compacting process might falter. To guard against this, tribes
26 were granted the ability to sue states. At the conclusion of
27 such suits, if the court holds that the state has failed to
28 negotiate in good faith, the court sets in motion a five-step

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON D.C. 20005-3701

www.nealrgross.com

1 process. One, the court orders the state and the tribe to
2 conclude a compact within 60 days. Two, if the parties fail to
3 reach a compact they must submit proposed compacts to a court
4 appointed mediator.

5 Three, the mediator selects from the submitted
6 compacts the one that best comports with IGRA, other applicable
7 law and the findings of the court. Four, the state has 60 days
8 to consent to the compact selected by the mediator and five, if
9 the state does not consent to the compact, the Secretary in
10 consultation with the tribe, prescribes procedures for Class III
11 gaming.

12 This mediation process can provide a strong incentive
13 for negotiation, even though the Department of the Interior had
14 resorted to the final step in this process only once and as I
15 eluded to earlier, I eluded to the Seminole cases, I know you are
16 all aware in Seminole the Supreme Court held that neither the
17 commerce clause nor the Indian commerce clause provide Congress
18 with the authority to abrogate state sovereign immunity. As a
19 result the federal courts have been divested of jurisdiction over
20 suits brought by Indian tribes against states under IGRA if the
21 state raises an 11th Amendment defense.

22 The Seminole decision, by not requiring states to
23 submit to suit, raises serious questions concerning the
24 functioning of the process that I outlined. IGRA provides a much
25 needed avenue for economic development in Indian country and to
26 the extent permitted by law, the Administration is committed to
27 protecting well-regulated Indian gaming as a means of building
28 strong tribal government and economic self-sufficiency.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON D.C. 20005-3701

www.nealrgross.com

1 Although the Supreme Court held in Seminole that
2 Congress does not have authority to waive 11th Amendment immunity
3 of states from suit in federal court, IGRA remains a valid
4 statute and does not effect existing tribal/state Class III
5 gaming compacts. The Secretary of the Interior, as you have been
6 made aware, is considering a rule to provide for a process to
7 insure that IGRA continues to fairly meet the interests of state
8 and tribal governments.

9 In the absence of comprehensive legislation to
10 address the compact process after Seminole, the Secretary's
11 process may be an important one to insure the continued
12 functioning of IGRA. Over the past several years, however,
13 Congress has considered legislative measures which, if enacted,
14 would eliminate IGRA's post-Seminole 11th Amendment infirmity.
15 One proposal would provide states and Indian tribes with the
16 opportunity to negotiate Class III gaming compacts. State
17 participation on the compacting process would be voluntary.

18 If no Class III gaming compact were concludes within
19 a period for negotiations, however, responsibility for concluding
20 a compact with a tribe would shift to the Secretary of the
21 Interior. The Department of Justice believes that some statutory
22 solution to the 11th Amendment problem is in the best interests
23 of all parties.

24 In light of the tribal/state compact process, the
25 Federal Government has retained limited oversight of Class III
26 gaming. Tribal gaming ordinances and management contracts for
27 Class III gaming are subject to the approval of the National
28 Gaming Commission. Tribal/state compact negotiating process is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON D.C. 20005-3701

www.nealrgross.com

1 subject to federal court oversight and tribal/state compacts are
2 subject to the approval of the Secretary of the Interior.

3 NIGC and Indian tribes share regulatory oversight of
4 Class II gaming or bingo, pull tabs and similar games. Under its
5 authority under Class II games, the NIGC may review tribal gaming
6 ordinances and management contracts, conduct background checks,
7 as necessary, audit books and records of gaming operations, levy
8 fines and issue closure orders. The NIGC has promulgated
9 detailed regulations to implement their authority.

10 Class I gaming or traditional cultural gaming is
11 subject to the exclusive regulatory authority of the tribes. The
12 Department of Justice is also charged with enforcement of the
13 law, which it does through the United States Attorneys for the
14 Criminal Division and the Environment and Natural Resources
15 Division playing supporting roles. The Environment and Natural
16 Resources Division also represents the Secretary and the NIG in
17 civil litigation.

18 The Federal Bureau of Investigation, in addition to
19 investigating felonies in Indian country, provides the NIGC and
20 other regulatory agencies with background and criminal record
21 information. The Department has a clear policy concerning
22 uncompact Class III gaming in Indian country and the overall
23 goal of the policy is the peaceful termination of illegal
24 operations within a reasonable period of time by negotiation and
25 where negotiation fails then by legal action.

26 In recognition of the different conditions existing
27 in the various federal districts, the United States Attorneys
28 have been given a large measure of discretion to implement this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON D.C. 20005-3701

www.nealrgross.com

1 policy. This discretion has at times been necessitated by
2 varying judicial interpretations of IGRA, varying state law
3 backgrounds, the status of pending negotiations with the states
4 and many other factors. Pursuant to this policy, the United
5 States engaged in litigation to enforce compliance with IGRA in
6 California, Florida, Idaho, Michigan, Nebraska, New Mexico,
7 Oklahoma, Texas and Washington.

8 The State of California and the Pala Tribe recently
9 concluded a compact which I'm sure you heard a great deal about
10 yesterday. The United States Attorneys for California with the
11 concurrence of the Department of Justice, offered the California
12 tribes two options. Under one a tribe could enter into compact
13 negotiations provided that it has not begun or ceases uncompact
14 Class III gaming. The State of California, if the tribe selected
15 that option, agreed not to raise the 11th Amendment defense to a
16 suit by a tribe for failure to negotiate in good faith if a
17 compact is not concluded under the option.

18 Under the second option, a tribe could simply elect
19 to adopt the Pala compact. The Department of Justice has
20 commenced litigation, has commenced enforcement actions against
21 California tribes that failed to choose one of those two options
22 and continue to conduct uncompact gaming. Some tribes have
23 agreed to the application of state regulatory standards and
24 authority for Class III gaming through the tribal/state
25 compacting process.

26 Other tribes have developed their own sophisticated
27 regulatory standards and tribal agencies to implement those
28 standards. Yet, there is a wide variation in terms of regulatory

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON D.C. 20005-3701

www.nealrgross.com

1 systems in Indian gaming and in some cases neither the state nor
2 the tribe has developed adequate regulatory systems for Class III
3 gaming. Moreover in some cases states don't wish to engage in
4 the tribal/state compact process and the Secretary of the
5 Interior may ultimately have to promulgate procedures for the
6 conduct of Class III gaming.

7 There is a need for minimum federal regulatory
8 standards and it is now clear that NIGC authority must be
9 increased to provide for the enforcement of those minimum
10 standards. Federal standards -- federal minimum regulatory
11 standards for Indian gaming should address background
12 investigations and licensing of key managers and employees,
13 surveillance and security systems to oversee the conduct of
14 gaming in cash accounts, procedures and controls to protect the
15 integrity of gaming, credit and debit collection controls,
16 controls over gambling devices and equipment, accounting and
17 auditing.

18 Tribes and states should have the option of meeting
19 these minimal federal regulatory standards in the negotiation and
20 implementation of tribal/state compacts. The federal regulator,
21 that is the NIGC, could operate a certification process to insure
22 that state or tribal gaming regulatory agencies possess the
23 qualifications and capacity to enforce the federal minimum
24 standards. The NIGC could also provide secondary regulatory
25 oversight as necessary to support state or tribal regulatory
26 agencies.

27 To insure that the NIGC has the capacity to enforce
28 federal minimum regulatory standards, any legislation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON D.C. 20005-3701

www.nealrgross.com

1 contemplated by Congress should provide the NIGC clear authority
2 to do such regulation and authority to assess reasonable fees on
3 all Class III gaming regulation to defray the cost of such
4 regulation. The Department believes that if these initiatives
5 are pursued the result will be a system that provides for a
6 rigorous enforcement of uniform standards and minimum regulation
7 for all Indian gaming activities.

8 Thank you again for the opportunity to present these
9 views, and I hope I didn't speak too quickly because I tend to do
10 that, of the Department of Justice on Indian gaming and on the
11 Indian Gaming Regulatory Act. And I'd be happy to try to answer
12 any questions you might have and if I can't answer them,
13 certainly to follow up at a later point in time.

14 CHAIRPERSON JAMES: Thank you, Mr. Di Gregory. We'll
15 go ahead and take questions for Mr. Di Gregory right now so that
16 he can make his flight.

17 COMMISSIONER LOESCHER: Madam Chairman --

18 CHAIRPERSON JAMES: Commissioner Loescher.

19 COMMISSIONER LOESCHER: -- just one question; have
20 your recommendations been presented to Congress at this time? On
21 what basis are you advancing these recommendations? Are they
22 cleared by the Attorney General and the White House?

23 MR. Di GREGORY: The items that I discussed in here
24 with respect to minimum regulatory standards have been presented
25 to the Senate Indian Affairs Committee on at least two occasions,
26 I believe, Mr. Loescher, when they have had hearings on amending
27 the Indian Gaming Regulatory Act and one of the subjects of those
28 hearings has been whether or not minimum federal regulatory

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON D.C. 20005-3701

www.nealrgross.com

1 standards are necessary or required. So, yes, the comments I
2 made about those minimum standards are comments that have been
3 made previously to Congress.

4 COMMISSIONER LOESCHER: Thank you.

5 CHAIRPERSON JAMES: Commissioner Bible?

6 COMMISSIONER BIBLE: Could you expand on your
7 testimony dealing with the Rincon Band and the connection with
8 organized crime and how that came to be uncovered and whether or
9 not that was a compacted Class III operation?

10 MR. Di GREGORY: No, it was not a compacted Class III
11 operation.

12 COMMISSIONER BIBLE: So there was no state oversight.

13 MR. Di GREGORY: There was no state oversight, no,
14 and as best I can recollect about what happened with the Rincon
15 information was developed that there was going to be an attempt
16 by Pittsburgh organized crime figures to gain some control over
17 whatever gaming the Rincon were conducting and whatever gaming
18 they might conduct in the future by misrepresenting to the NIGC
19 who it was who was going to be supporting the operation of the
20 Rincon and I believe that that was one of those cases and I can
21 get you more detailed information if you like, but I believe that
22 that was one of those cases where there was cooperation on the
23 part of some tribal members.

24 COMMISSIONER BIBLE: Thank you.

25 CHAIRPERSON JAMES: Thank you. Commissioner Moore?

26 COMMISSIONER MOORE: I'd just like to ask if there
27 was any way possible if this could be delayed by a year, your
28 presentation on this. I believe that this Commission might come

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON D.C. 20005-3701

www.nealrgross.com

1 up with something that would be of benefit to put in this
2 regulation for you to think about.

3 MR. Di GREGORY: Well, I don't know how long it's
4 going to take us to get to the point where we have minimum
5 federal regulatory standards. As I said, Mr. Moore, there have
6 been proposals, there have been amendments proposed to the Indian
7 Gaming Regulatory Act but no action has been taken on them and
8 there's -- it's hard for me to say, I just don't know when any
9 such action will be taken, so you may have that year.

10 CHAIRPERSON JAMES: Additional questions? Hearing
11 none, I want to do thank you, Mr. Di Gregory, for making this
12 trip and for your testimony that was offered before this
13 Commission. As I've said to all of our panelists, we hope that
14 we have your advice and expertise upon which we can depend for
15 the life of the Commission and any additional information that
16 you think would be helpful to us for our deliberation, I would
17 ask that you go ahead and submit it.

18 MR. Di GREGORY: Well, thank you for having me. I'm
19 glad I could be here and I regretted that when you had your
20 hearing on Internet gaming back in May that I had a scheduling
21 conflict and couldn't appear, but thanks for this opportunity
22 today and we will be glad to provide you with assistance as the
23 need arises.

24 COMMISSIONER BIBLE: Since he brought up the topic,
25 can we ask you questions about Internet gaming? Are you the
26 responsible person within the Department of Justice?

27 CHAIRPERSON JAMES: You almost got out.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON D.C. 20005-3701

www.nealrgross.com

1 MR. Di GREGORY: Almost. Well, I will do my best to
2 try to answer whatever question you might have.

3 COMMISSIONER BIBLE: Should the Kyl Bill become law,
4 how do you see it being enforced?

5 MR. Di GREGORY: I'll tell you what, I can't answer
6 that question and I will be glad to offer the Commission an
7 explanation as to why I can't answer it, but I'm unable to do so.
8 I can refer you, though, to the testimony that I presented before
9 the House subcommittee on crime of the House judiciary committee
10 that was -- I think that was given back in June of this year
11 which talks -- which speaks about what we believe should be
12 considered by the Congress when it tries to decide what kind of
13 Internet gambling regulation or prohibition it passes.

14 CHAIRPERSON JAMES: Commissioner Wilhelm?

15 COMMISSIONER WILHELM: Am I right in understanding --
16 on the Kyl Bill, am I right in understanding that it was the --
17 or is the position of the Department of Justice that Congress
18 ought to wait for the recommendations of this Commission?

19 MR. Di GREGORY: I did in my testimony, which I think
20 I have here as a matter of fact --

21 COMMISSIONER WILHELM: Yes, I read it.

22 MR. Di GREGORY: Okay.

23 COMMISSIONER WILHELM: You did.

24 MR. Di GREGORY: I believe I did say in my testimony
25 that one of the things that Congress ought to consider doing is
26 waiting for you people do to your work and hear your
27 recommendations.

28 COMMISSIONER WILHELM: Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON D.C. 20005-3701

www.nealrgross.com

1 COMMISSIONER MCCARTHY: Well, that might apply, Madam
2 Chair, to Commissioner Bible's request also.

3 CHAIRPERSON JAMES: Possibly. Let me put you on the
4 spot before you leave and ask, we have had several requests in to
5 the Department for technical expertise and help in the form of
6 detailees that could help the Commission with its work. And we
7 have an Internet subcommittee and I wonder if you would be
8 willing to entertain yet another request for that kind of
9 technical assistance and help to this Commission.

10 MR. Di GREGORY: Yes, we will entertain that request
11 and only because I don't have ultimate authority over who in the
12 Criminal Division gets to go where, because I'm only a Deputy
13 Assistant Attorney General, I'm not the Assistant Attorney
14 General who heads the Commission -- who heads the Division, I
15 can't commit to you at this time, but we would be glad to
16 entertain that request.

17 CHAIRPERSON JAMES: Thank you. Any other questions?
18 Thank you very much.

19 MR. Di GREGORY: Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.

(202) 234-4433

WASHINGTON D.C. 20005-3701

www.nealrgross.com